

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

**EIGHT MILE STYLE, LLC; MARTIN  
AFFILIATED, LLC,**

**Plaintiffs,**

**v.**

**SPOTIFY USA INC.;  
THE HARRY FOX AGENCY LLC,**

**Defendants.**

**CIVIL CASE NO. 19-CV-00736**

**JUDGE ALETA A. TRAUGER**

**JURY DEMAND**

**SPOTIFY USA INC.,**

**Third-Party Plaintiff,**

**v.**

**KOBALT MUSIC PUBLISHING  
AMERICA, INC.**

**Third-Party Defendant.**

**DEFENDANT THE HARRY FOX AGENCY LLC'S MOTION TO STRIKE, OR  
ALTERNATIVELY DISREGARD, CERTAIN EXHIBITS FILED IN SUPPORT OF  
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

The Harry Fox Agency LLC ("HFA") respectfully moves the Court to strike, or alternatively disregard certain exhibits filed by Plaintiffs in support of their Motion for Summary Judgment. HFA seeks to strike: (1) the Declaration of Robert "Bob" Kohn, (Dkt. No. 355.1) (the "Kohn Declaration") and (2) the Declaration of Quentin Bradley, (Dkt. No. 359.5) (the "Bradley Declaration").

As set forth herein, and in HFA's accompanying Memorandum of Law, the Court is empowered with broad discretion in permitting, or restricting, expert testimony submitted in support of summary judgment. The Court should exercise its discretion, strike these expert declarations, and disregard them in ruling on summary judgment. The Court should strike the Kohn Declaration because: (1) it is replete with legal conclusions; (2) Kohn speculates about the mental state of witnesses; (3) Kohn's arguments contain inappropriate, and inaccurate, factual recitations; and (4) Kohn's assertions about music publishing industry customs and standards and the "good-faith, commercially reasonable efforts" standard of the Music Modernization Act are unreliable. The Court should, likewise, strike the Kohn Declaration because it contains arguments not previously disclosed in the Kohn Reports, or deposition testimony, in violation of Rule 26(a)(2)(B) of the Federal Rules of Civil Procedure.

The Court should strike the Bradley Declaration because it: (1) lacked sufficient knowledge concerning the music publishing industry; (2) did not base his opinions on sufficient facts and data; (3) did not apply reliable principles and methods in reaching his opinions; and (4) as a result of the foregoing, reached inconsistent results. These fundamental flaws render his opinions unreliable, and they will not assist the trier of fact of reaching any conclusions in this case.

Based on the foregoing, and as set forth more fully in the accompanying Memorandum of Law, HFA respectfully requests that the Court strike, or in the alternative disregard for purposes of ruling on summary judgment, the Kohn Declaration and the Bradley Declaration.

Respectfully submitted,

/s/ Jay S. Bowen

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## **CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of ***DEFENDANT THE HARRY FOX AGENCY LLC'S MOTION TO STRIKE, OR ALTERNATIVELY DISREGARD, CERTAIN EXHIBITS FILED IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT*** was filed electronically with the Clerk of the Court using the CM/ECF system. Notice of this filing will be sent to all parties and counsel of record by operation of the Court's CM/ECF system, and via electronic and/or U.S. mail, postage prepaid, on February 23, 2024, to:

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